This question, however, still presents itself: if the purchaser had made default and refused to order any salt, how could the vendor have estimated damages when the grade or grades of salt which purchaser might have ordered, could not be ascertained? H. S.

THE NEGOTIABLE INSTRUMENTS LAW AS AFFECTING THE DISCHARGE OF ACCOMMODATION MAKER AND SURETY BY EXTENSION OF TIME OF PAYMENT.—The following two cases, recently decided in Oregon and Maryland, respectively, under the Negotiable Instruments Law, hold that that act has abrogated the rule of suretyship releasing a surety or accommodation maker from liability when the payee has given the debtor a valid extension of time of payment.

Action by the payees on a promissory note signed by one Meachem and one Lyons, the word "surety" being added to the name of the latter. Meachem defaulted. Lyons answered admitting the execution of the note, and for an affirmative defense pleaded that he signed the instrument as a surety only, without consideration, and for the sole use and benefit of Meachem and of the plaintiffs; that the payees had full knowledge of the conditions under which it was executed; that after the note had matured, plaintiffs, in consideration of additional security given them by Meachem, and without the knowledge and consent of the defendant, Lyons, extended the time of payment; and that by reason thereof he was relieved from all liability. *Held,* that the extension of time did not discharge Lyons, and that he continued liable on the note. *Cellers et al.* v. *Meachem et al.* (1907), — Ore. —, 89 Pac. Rep. 426.

The Court reasoned that "since the word 'surety' can only affect the status of the makers of the note as between themselves, and as Lyons' liability to the plaintiffs is the same as if he had signed the instrument without using the qualifying word after his name, he became, in the language of the Negotiable Instruments Law, 'absolutely required to pay the same' and is therefore 'primarily liable.'" Oregon Laws, 1899, p. 18; B. & C. Comp., § 4592. This reasoning was held applicable notwithstanding the fact that "the holder at the time of taking the instrument knew him to be only an accommodation party." B. & C. Comp., § 4431. The Negotiable Instruments Law (B. & C. Comp., § 4521) sets out the methods whereby a negotiable instrument may be discharged. It also specifies (B. & C. Comp., § 4522) the methods whereby a party secondarily liable may be discharged. Among the latter, but not among the former, is found the defense relied upon in this case. The Court applied the maxim "expressio unius est exclusio alterius," and arrived at the conclusion set out above.

The Farmers' and Mechanics' National Bank sued William H. Vanderford and two other men on a promissory note, payable to the order of the bank in two months from date. Vanderford had signed the note without in any way indicating on the face of the note that he was anything other than a maker thereof, or that he was to be bound by it otherwise than as a joint and several maker with the other two men. Vanderford pleaded as a defense to this suit that he was a surety on this note, that such fact was known to the bank at the time the note was executed and delivered; that after the maturtiy of the note, with such knowledge, the bank, for a valuable consideration paid

to it by the principal of the note, and without the knowledge or consent of Vanderford, extended the time of the payment of the note for four months; and that he (Vanderford) was thereby discharged from all liability thereon. *Held,* that, under § 15 of the Negotiable Instruments Law of 1898, which states that "the person primarily liable on an instrument is the person who, by the terms of the instrument, is absolutely required to pay the same," Vanderford was primarily liable for the payment of this note; and that, as the Legislature has declared in § 138 of the same law, that a negotiable instrument, signed by a party who is primarily liable thereon, as that liability is defined by the act, may be discharged in one of five specified methods, no one of which had been set up as a defense in this case, the methods so specified are exclusive, on the principle "expressio unius est exclusio alterius," and the pleas of Vanderford in this case were fatally defective. *Vanderford* v. *Farmers' and Mechanics' National Bank* (1907), — Md. —, 66 Atl. 47.

A joint maker may be shown by parol to be a surety, and will be discharged by any act of the creditor, after he had knowledge of the fact of suretyship, which would discharge any other surety. *Hubbard* v. *Gurney,* 64 N. Y. 457; *Kennedy* v. *Evans,* 31 Ill. 258; *Coats* v. *Swindle,* 55 Mo. 31; *Welfare* v. *Thompson,* 83 N. C. 276; *Irvine* v. *Adams,* 48 Wis. 468; *Thompson* v. *Coffman,* 15 Ore. 631; *Stevens* v. *Oaks,* 58 Mich. 343. The addition of the word "surety" to the name of the signer of an instrument is only prima facie evidence of his suretyship, and parol evidence may be admitted to prove the contrary. *Boulware* v. *Hartsook's Adm'r,* 83 Va. 679. Such addition indicates the relation in which the parties stand to each other, and the payee and other subsequent parties to the note must deal with it with the knowledge that the makers occupy such position. *Harris* v. *Brooks,* 21 Pick. (Mass.) 195; *Hubbard* v. *Gurney,* 64 N. Y. 457. The relationship of principal and surety exists as between the person for whose benefit a note has been made and the accommodated party, at least so far as their own interests are concerned. *Cummings* v. *Little,* 45 Me. 183; *State Bank* v. *Smith,* 155 N. Y. 185; *Parks* v. *Ingram,* 22 N. H. 283. A creditor, by a valid and binding agreement, without the assent of the surety, giving an extension of time for payment to the principal, thereby discharges the surety. *Home Nat. Bank* v. *Waterman,* 134 Ill. 461; *Wylie* v. *Hightower,* 74 Tex. 306; *Post* v. *Losey,* 111 Ind. 74; *Alley* v. *Hopkins,* 98 Ky. 668; *Brooks* v. *Wright,* 13 Allen (Mass.) 72; *McComb* v. *Kittridge,* 14 O. 348. And a joint maker who is in fact a surety or accommodation maker, to the knowledge of the holder, is discharged under the same circumstances. *Hall* v. *Capital Bank,* 71 Ga. 715; *Barron* v. *Cady,* 40 Mich. 259; *Smith* v. *Freyler,* 4 Mont. 489; *Gordon* v. *Chattanooga Third Nat. Bank,* 144 U. S. 97. The foregoing were the rules in force in the majority of the states before the passage of the Negotiable Instruments Law in many of them. In view of the decisions in the two principal cases, that law would seem to have changed these rules in whatever states it has been adopted, as far as negotiable paper is concerned; and in such states neither the surety nor the accommodation maker apparently is discharged by a binding extension of time of payment to the debtor by the creditor, without the knowledge or consent of the surety or accommodation maker. *National Citizens' Bank* v. *Toplitz,* 81 N. Y. Supp. 422. J. W.